

Judge Robert S. Lasnik

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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
BY WESTERN DISTRICT OF WASHINGTON  
DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

TERRY R. MARTIN,

Defendant.

NO. CR03-0370RSL

PLEA AGREEMENT

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, Kurt P. Hermanns and Floyd G. Short, Assistant United States Attorneys for said District, and the defendant, TERRY R. MARTIN, and his attorneys, Robert Chadwell and David E. Wilson, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C).

1. The Charge. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter pleas of guilty to the charges contained in the Superseding Indictment. By entering this plea of guilty, defendant hereby waives all objections to the form of the charging document.

a. Conspiracy, as charged in Count 1, in violation of Title 18, United States Code, Section 371.

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03-CR-00370-PET

1           b.     Securities Fraud, as charged in Counts 2-10, in violation of Title 15,  
2 United States Code, Sections 78j(b) and 78ff(a), Title 17, Code of Federal Regulations,  
3 Section 240.10b-5, and Title 18, United States Code, Section 2.

4           c.     Wire Fraud, as charged in Counts 11-20, in violation of Title 18,  
5 United States Code, Sections 1343 and 2.

6           d.     Money Laundering, as charged in Counts 22-31, Title 18, United  
7 States Code, Sections 1957 and 2.

8           2.     Elements of the Offense. The elements of the offense of conspiracy, as  
9 charged in Count 1, in violation of Title 18, United States Code, Section 371, are as  
10 follows:

11                 First, the defendant did knowingly conspire, combine, confederate, and  
12 agree together with others to commit an offense against the United States;

13                 Second, the defendant knew the unlawful purpose of the agreement and  
14 joined in it willfully, that is, with the intent to further the unlawful purpose; and

15                 Third, that one of the conspirators during the existence of the conspiracy  
16 knowingly committed at least one of the overt acts described in the superseding  
17 indictment, in order to accomplish some object or purpose of the conspiracy.

18           The elements of securities fraud, as charged in Counts 2-10, in violation of Title  
19 15, United States Code, Sections 78j(b) and 78ff(a), and Title 17, Code of Federal  
20 Regulations, Section 240.10b-5, are as follows:

21                 First, the defendant acted unlawfully, knowingly and willfully;

22                 Second, the defendant used means and instrumentalities of interstate  
23 commerce and of the mail;

24                 Third, the defendant, directly or indirectly, used and employed in  
25 connection with the purchase and sale of securities, manipulative and deceptive devices  
26 contrivances by, (a) employing devices, schemes and artifices to defraud; (b) making  
27 untrue statements of material facts and omitting to state material facts necessary to make  
28 the statements made, in light of the circumstances in which they were made, not

misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons.

The elements of wire fraud, as charged in Counts 11-20, in violation of Title 18, United States Code, Section 1343, are as follows:

First, a person made up a scheme and artifice to defraud or for obtaining money or property by means of false or fraudulent pretenses or representations;

Second, the defendant knew that the pretenses or representations were false or fraudulent;

Third, the false or fraudulent pretenses or representations concerned a material matter;

Fourth, the defendant acted with the intent to defraud; and

Fifth, the defendant used, or caused the use of, wire communications in interstate commerce to carry out or attempt to carry out the scheme.

The elements of money laundering, as charged in Counts 22-31, Title 18, United States Code, Section 1957, are as follows:

First, the defendant knowingly engaged in a monetary transaction in criminally derived property;

Second, the monetary transaction involved funds derived from wire fraud; and

Third, the monetary transaction was in an amount greater than \$10,000.

3. The Penalties. Defendant understands that the statutory penalties for the offenses of conspiracy, wire fraud, and money laundering as charged in the Superseding Indictment, are as follows:

a. Count 1 (Conspiracy): imprisonment for up to five (5) years, a fine of up to two hundred fifty thousand dollars (\$250,000), a period of supervision following release from prison of at least two (2) but not more than three (3) years, and a one hundred dollar (\$100) penalty assessment. The defendant agrees that the penalty assessment shall be paid at or before the time of sentencing.

1           b.     Counts 2-10 (Securities Fraud): imprisonment for up to ten (10)  
2 years, a fine of up to one million dollars (\$1,000,000.00), a period of supervision  
3 following release from prison of between two (2) and three (3) years, and a one hundred  
4 dollar (\$100.00) penalty assessment. Defendant agrees that the penalty assessment shall  
5 be paid at or before the time of sentencing.

6           c.     Counts 11-20 (Wire Fraud): imprisonment for up to five (5) years, a  
7 fine of up to two hundred fifty thousand dollars (\$250,000), a period of supervision  
8 following release from prison of between two (2) and three (3) years, and a one hundred  
9 dollar (\$100) penalty assessment.

10          d.     Counts 22-31 (Money Laundering): imprisonment for up to five (5)  
11 years, a fine of up to two hundred fifty thousand dollars (\$250,000) or twice the amount  
12 of the criminally derived property involved in the transaction, a period of supervision  
13 following release from prison of not more than three (3) years, and a one hundred dollar  
14 (\$100) penalty assessment.

15          The defendant understands that in addition to any term of imprisonment and/or  
16 fine that is imposed, the Court may order defendant to pay restitution to any victim of the  
17 offense, as required by law.

18          Defendant agrees that any monetary penalty the Court imposes, including the  
19 special assessment, fine, costs or restitution, is due and payable immediately, and further  
20 agrees to submit a completed Financial Statement of Debtor form as requested by the  
21 United States Attorney's Office.

22          Defendant understands that supervised release is a period of time following  
23 imprisonment during which he will be subject to certain restrictions and requirements.  
24 Defendant further understands that if supervised release is imposed and he violates one or  
25 more of its conditions, he could be returned to prison for all or part of the term of  
26 supervised release that was originally imposed. This could result in defendant serving a  
27 total term of imprisonment greater than the statutory maximum stated above.  
28

1       4.     Rights Waived by Pleading Guilty. Defendant represents to the Court that  
2 he is satisfied with the representation provided by his attorneys. Defendant understands  
3 that, by pleading guilty, he knowingly and voluntarily waives the following rights:

4             a.     The right to plead not guilty, and to persist in a plea of not guilty;

5             b.     The right to a speedy and public trial before a jury of defendant's  
6 peers;

7             c.     The right to the effective assistance of counsel at trial, including, if  
8 defendant could not afford an attorney, the right to have the Court appoint one for  
9 defendant;

10            d.     The right to be presumed innocent until guilt has been established at  
11 trial, beyond a reasonable doubt;

12            e.     The right to confront and cross-examine witnesses against defendant;

13            f.     The right to compel or subpoena witnesses to appear on defendant's  
14 behalf;

15            g.     The right to testify or to remain silent at trial, at which trial such  
16 silence could not be used against defendant;

17            h.     The right to appeal a finding of guilt or any pretrial rulings; and

18            i.     The right, to the extent required by law, to have sentencing factors  
19 charged in the Superseding Indictment or determined by a jury beyond a reasonable  
20 doubt.

21       5.     United States Sentencing Guidelines. Defendant understands and  
22 acknowledges that, absent applicable intervening law:

23            a.     The United States Sentencing Guidelines, promulgated by the United  
24 States Sentencing Commission, are applicable to this case;

25            b.     Defendant understands the Court will determine defendant's  
26 applicable Sentencing Guidelines range at the time of sentencing; and

27            c.     Except as provided in paragraph nine below, Sentencing, defendant  
28 may not withdraw a guilty plea solely because of the sentence imposed by the Court.

1           6.     Ultimate Sentence. Defendant acknowledges that no one has promised or  
2 guaranteed what sentence the Court will impose.

3           7.     Restitution. Defendant shall make restitution in an amount set by the court.  
4 Said amount shall be due and payable immediately and shall be paid in accordance with a  
5 schedule of payments as ordered by the Court.

6           8.     Statement of Facts. The parties agree on the following facts in support of  
7 defendant's guilty plea and sentencing. Defendant admits he is guilty of the charged  
8 offenses and expressly waives any right to have these facts determined by a jury beyond a  
9 reasonable doubt.

10           a.     At all relevant times TERRY R. MARTIN ("Mr. Martin") was a  
11 real-estate developer in Mukilteo, Washington, and elsewhere in Washington State, doing  
12 business through and in the names of various Washington State corporations, including  
13 Silver Sound LLC, Silver Legacy Corporation, and Marwest, Inc., along with Silver Inc.,  
14 a Nevada corporation. In that capacity, Mr. Martin induced the Holmes Harbor Sewer  
15 District, located on Whidbey Island, Washington, to issue approximately \$20 million in  
16 tax-exempt municipal bonds for the purpose of funding infrastructure and a limited land  
17 purchase for a commercial development project called the Silver Sound Corporate Center  
18 to be located near Everett, Washington. In connection with issuance of those bonds, Mr.  
19 Martin made numerous false and fraudulent representations and material omissions.  
20 Those misrepresentations, as described more fully below, occurred in conversations;  
21 official documents required for bonds; and in correspondence, e-mails, and faxes between  
22 various parties. Many such communications were via interstate wires and  
23 instrumentalities of interstate commerce, including the mail, in connection with the  
24 purchase and sale of securities.

25           b.     Mr. Martin's Silver Sound Corporate Center project included a total  
26 area of development land of approximately 40 acres. Pursuant to Mr. Martin's  
27 development plan, HHSD would own 15 acres of the property on which the public  
28 infrastructure was to be constructed, including such things as roads, drainage structures,

1 and wetlands. HHSD would pay for those 15 acres with about \$6.2 million in bond  
2 proceeds. Mr. Martin would own the other 25 acres on which the six office buildings  
3 would be constructed. Mr. Martin knew and understood the importance of establishing  
4 the value of the 15 acres to be purchased by HHSD. In truth and in fact, however, Mr.  
5 Martin misled HHSD about the property and its value, because he was using HHSD's  
6 \$6.2 million in bond proceeds to purchase the full 40 acres from the owner, thereby  
7 keeping 25 acres for himself without paying any of his own funds. Mr. Martin originally  
8 planned that the purchase and sale transaction would be "bumped up" by making it appear  
9 that one of Mr. Martin's companies had purchased the 40 acres for \$6.2 million and then  
10 sold the 40 acres to another of Mr. Martin's companies at a higher price, but no such  
11 transaction occurred. Instead, at closing of the bond issuance, the \$6.2 million  
12 disbursement of bond funds was paid into escrow and then to the owner, while HHSD  
13 received title to its 15 acres and Mr. Martin's company received title to his 25 acres. In  
14 other words, Mr. Martin had contrived to obtain his 25 acres essentially for free. Mr.  
15 Martin knew and understood that this was an omission of material information from  
16 HHSD, the broker/dealers and the bond purchasers. Mr. Martin also knew and  
17 understood that several letters provided to the HHSD purporting to support a value of  
18 about \$6.2 million for HHSD's 15 acres were false and misleading. Mr. Martin further  
19 directed the alteration of an appraisal to omit the "as-is" value of the 40 acres, thereby  
20 concealing the purchase of the full 40 acres with the \$6.2 million of bond funds and the  
21 true value of the 15 acres for which HHSD was overpaying.

22 c. Mr. Martin knew and understood that construction and leasing of the  
23 six-building complex and its 500,000 square feet of office space was critical to the  
24 issuance of the bonds and the broker-dealers' and investors' decisions to purchase the  
25 bonds. It was the revenue from the leasing of the office space that would provide Mr.  
26 Martin sufficient funds to pay the bond assessments. Nevertheless, Mr. Martin made a  
27 series of fraudulent and false representations that the Silver Sound Corporate Center had  
28 been fully pre-leased. First, he falsely claimed the tenant was a "Triple A" rated software

1 company, which he implied was Microsoft, and circulated a phony lease with a blacked-  
2 out tenant name. Mr. Martin directed the creation of several false letters identifying  
3 Microsoft as the tenant. When potential bond investors pressed for a formal disclosure  
4 identifying the tenant, Mr. Martin engaged in another sham purporting to terminate the  
5 lease. Next, he substituted the phony Microsoft lease with a bogus letter of intent to lease  
6 from Edward Tezak, *dba* J. Zacket Enterprises, that purported to rent the full complex.  
7 Mr. Tezak's letter of intent to lease asserted further that Mr. Tezak's company was a  
8 division of R.A. King, Inc. Mr. Martin knew and understood that Mr. Tezak's company  
9 had no ability to rent this office space and also knew it had no connection to R.A. King,  
10 Inc. Finally, by the time the bonds closed in October of 2000, Mr. Martin represented  
11 that there was a binding lease with R. A. King, Inc., of Houston, Texas, to rent the full  
12 500,000 square feet of office space. In truth and in fact, however, R. A. King, Inc. had no  
13 ability to rent the Silver Sound Corporate Center and signed a lease agreement only upon  
14 Martin's assurance that it was not binding and upon delivery of a separate side-agreement  
15 allowing R. A. King, Inc. to unilaterally terminate the lease without cause or  
16 consequence. That side-agreement, which rendered the lease an illusion, was kept secret  
17 by Mr. Martin from the parties to the bond issuance. As Mr. Martin well knew, therefore,  
18 his representations that the Silver Sound Corporate Center had been fully pre-leased,  
19 which were critical to the bond issuance, were false and fraudulent.

20 d. Mr. Martin knew and understood that it was essential to secure  
21 private financing in addition to bond funds. That private financing included a \$43 million  
22 dollar loan for construction of the six buildings and a separate \$20 million line of credit  
23 acting as a guarantee for repayment of the bonds. Mr. Martin made numerous false and  
24 fraudulent representations concerning the commitment of these loan funds. He produced,  
25 and had Edward Tezak and others produce at his direction, letters which falsely claimed  
26 that these funds were committed by a lender. He produced or had others produce loan  
27 agreements and deeds of trust evidencing such loans when there were in fact no loans and  
28 no lenders. He, Mr. Tezak, and John White created a corporate entity called Goldman Sig

1 LLC, in which Goldman Sachs purportedly participated, to create an illusion that there  
2 was a viable lender. In truth and in fact, however, there were no loan funds or line of  
3 credit.

4 e. Mr. Martin knew and understood that a binding construction contract  
5 for completion of the six buildings was another important ingredient of the bond issuance.  
6 To create the illusion that a construction contract existed, a preliminary form contract  
7 provided by Howard S. Wright Construction, which contained no fixed price, was  
8 fraudulently altered to insert a maximum fixed price for construction of the project. The  
9 altered contract was then faxed to various parties involved with the bond issuance in  
10 support of the false and fraudulent claim that there was a fixed price contract.

11 f. Mr. Martin knew and understood that construction of the six office  
12 buildings required various permits from the City of Everett. Mr. Martin knew further that  
13 his application for such permits, in the form of an application for a binding site plan, had  
14 been rejected by the City of Everett and returned as incomplete in April of 2000. When  
15 the bond issuance closed in October of 2000, no permits had been issued and Mr. Martin  
16 had not resubmitted his application. Nevertheless, Mr. Martin falsely and fraudulently  
17 represented to the HHSD Commissioners and others that the permits had been issued or  
18 would be issued immediately.

19 g. When the bond issuance closed in October of 2000, Mr. Martin was  
20 paid \$1.2 million in bond proceeds for reimbursement of funds he claimed to have  
21 previously spent on the Silver Sound project. Although Mr. Martin had advanced funds  
22 to cover some costs, they were minimal. Almost all of the \$1.2 million requested by Mr.  
23 Martin was false and fraudulent. Once he received the funds, he spent them on a variety  
24 of personal expenses. Many of those purchases were in amounts greater than \$10,000.

25 h. In December of 2000, Mr. Martin and others submitted another  
26 reimbursement request for approximately \$900,000. That request was supported by  
27 invoices purporting to document work recently performed on the project. Those invoices  
28 had been falsely and fraudulently created or altered by Mr. Martin and others.

1 i. Mr. Martin's fraudulent actions required the complicity or  
2 cooperation of other individuals. He obtained that in part by insinuating himself into  
3 relationships where others stood to profit from the success of his Silver Sound project.  
4 Those promises and inducements included payment of legal fees, offers of lucrative  
5 future work, offers to purchase their businesses and payments of past-due bills.

6 j. Mr. Martin admits and agrees that his actions as described herein  
7 were done knowingly, deliberately, and with the intent to defraud. He admits further that  
8 such actions occurred within the Western District of Washington.

9 k. Mr. Martin admits and agrees that, except as modified or clarified in  
10 this plea agreement, the facts alleged in Counts 1 through 20 and Counts 22 through 31 of  
11 the Superseding Indictment are true and correct.

12 9. Sentencing. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal  
13 Procedure, the parties acknowledge and agree that the appropriate sentence of  
14 imprisonment to be imposed by the Court at the time of sentencing should be within the  
15 range of 60 to 96 months. If the sentencing court does not adopt the agreement of the  
16 parties and imposes a sentencing outside the agreed upon range, both the defendant and  
17 the United States reserve the right to withdraw from this agreement pursuant to Rule  
18 11(c)(1)(C) of the Federal Rules of Criminal Procedure and to proceed to trial. No other  
19 agreement has been made with regard to the imposition of the sentence in this matter, and  
20 the parties understand that the Court retains full discretion to impose a sentence within the  
21 range agreed to above. Further, the parties understand that the Court retains full  
22 discretion with regard to the imposition of a term of supervised release, the conditions of  
23 supervised release, fines, forfeitures or restitution as may be applicable.

24 10. Non-Prosecution of Additional Offenses. As part of this Plea Agreement,  
25 the United States Attorney's Office for the Western District of Washington agrees to  
26 move to dismiss the remaining counts in the Indictment at the time of sentencing and not  
27 to prosecute defendant for any additional offenses known to it as of the time of this  
28 Agreement that are based upon evidence in its possession at this time, or that arise out of

1 the conduct giving rise to this investigation. In this regard, defendant recognizes that the  
2 United States has agreed not to prosecute all of the criminal charges that the evidence  
3 establishes were committed by defendant solely because of the promises made by  
4 Defendant in this Agreement. Defendant acknowledges and agrees, however, that for  
5 purposes of preparing the Presentence Report, the United States Attorney's Office will  
6 provide the United States Probation Office with evidence of all relevant conduct  
7 committed by defendant.

8 11. Voluntariness of Plea. Defendant acknowledges that he has entered into  
9 this Plea Agreement freely and voluntarily, and that no threats or promises, other than the  
10 promises contained in this Plea Agreement, were made to induce defendant to enter this  
11 plea of guilty.

12 12. Statute of Limitations. In the event that this Agreement is not accepted by  
13 the Court for any reason, or defendant has breached any of the terms of this Plea  
14 Agreement, the statute of limitations shall be deemed to have been tolled from the date of  
15 the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea  
16 Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea  
17 Agreement by defendant is discovered by the United States Attorney's Office.

18 13. Post-Plea Conduct. Defendant understands that the terms of this Plea  
19 Agreement apply only to conduct that occurred prior to the execution of this Agreement.  
20 If, after the date of this Agreement, defendant should engage in conduct that would  
21 warrant an increase in defendant's adjusted offense level or justify an upward departure  
22 under the Sentencing Guidelines (examples of which include, but are not limited to:  
23 obstruction of justice, failure to appear for a court proceeding, criminal conduct while  
24 pending sentencing, and false statements to law enforcement agents, the probation officer  
25 or Court), the United States is free under this Agreement to seek a sentencing  
26 enhancement or upward departure based on that conduct.

27 14. Cooperation. Defendant shall cooperate completely and truthfully with law  
28 enforcement authorities in the investigation and prosecution of other individuals involved

1 in criminal activity. Such cooperation shall include, but not be limited to, complete and  
2 truthful statements to law enforcement officers, as well as complete and truthful  
3 testimony, if called as a witness before a grand jury, or at any state or federal trial, retrial,  
4 or other judicial proceedings. Defendant acknowledges that this obligation to cooperate  
5 shall continue after defendant has entered a guilty plea and sentence has been imposed, no  
6 matter what sentence defendant receives; defendant's failure to do so may constitute a  
7 breach of this Plea Agreement.

8 Defendant understands that the United States will tolerate no deception from him.  
9 If, in the estimation of the United States Attorney, information or testimony provided  
10 from the date of the Plea Agreement, proves to be untruthful or incomplete in any way,  
11 regardless of whether the untruthfulness helps or hurts the United States' case, the United  
12 States Attorney for the Western District of Washington may consider that defendant has  
13 breached this Plea Agreement.

14 The United States Attorney's Office for the Western District of Washington, in  
15 turn, agrees not to prosecute defendant for any other offenses, other than crimes of  
16 violence, that defendant may have committed in the Western District of Washington prior  
17 to the date of this Agreement about which: (1) the United States presently possesses  
18 information; or (2) defendant provides information pursuant to this Agreement to  
19 cooperate with the authorities.


20 The parties agree that information provided by defendant in connection with this  
21 Plea Agreement shall not be used to determine defendant's sentence, except to the extent  
22 permitted by USSG § 1B1.8.

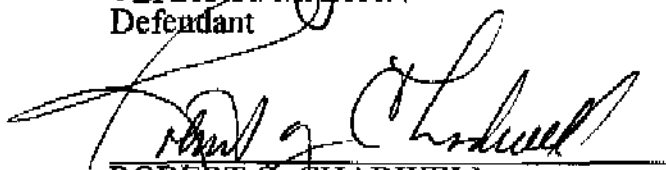
23 Defendant understands that the United States will not file a motion for downward  
24 departure pursuant to USSG § 5K1. The United States agrees, however, that if defendant  
25 provides full cooperation as required by this plea agreement and makes a complete and  
26 good faith effort to reimburse the bond holders for any loss or potential loss occurring as  
27 a result of these offenses, then the United States Attorney, in his discretion, will  
28 recommend a sentence at or near the bottom of the agreed upon range of 60 to 96 months.

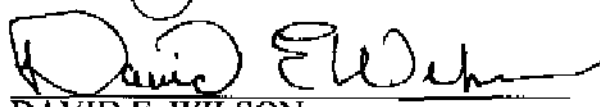
1 Defendant agrees that his sentencing date may be delayed based on the United  
2 States' need for his continued cooperation, and agrees not to object to any continuances  
3 of his sentencing date sought by the United States.

4 15. Completeness of Agreement. The United States and defendant  
5 acknowledge that these terms constitute the entire Plea Agreement between the parties.  
6 This Agreement only binds the United States Attorney's Office for the Western District  
7 of Washington. It does not bind any other United States Attorney's Office or any other  
8 office or agency of the United States, or any state or local prosecutor.

9  
10 Dated this 29th day of July, 2004.

11  
12   
13 TERRY R. MARTIN  
14 Defendant

15   
16 ROBERT G. CHADWELL  
17 Attorney for defendant

18   
19 DAVID E. WILSON  
20 Attorney for defendant

21   
22 KURT P. HERMANNNS  
23 Assistant United States Attorney

24   
25 FLOYD G. SHORT  
26 Assistant United States Attorney